IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8106 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAILALBHAI RAICHANDBHAI SINCE DECEASED THRO' HEIRS&L.R

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioners

Mr IM Pandya AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/09/2000

ORAL JUDGEMENT

Heard learned advocate Mr. Patel for the petitioner and Mr. IM Pandya, the learned AGP for the respondent authorities.

This petition was admitted by this court by issuing rule thereon on 1.5.1989 and while issuing rule, ad interim relief in terms of para 22 has also been granted. In this petition, the petitioner has challenged the order passed by the Gujarat Revenue Tribunal in Revision Application No. Ten.BA.27 of 1985 dated 30th October, 1987. The facts leading to the filing of this petition are as under in short :

The petitioner namely Shri Bhailalbhai Ramchandrabhai was holding in all 46 A. 15 G. of land in village Santhal of Taluka Sanand. The Mamlatdar and A.L.T. Sanand, in Ceiling Case No. 37 of 1976 declared A.7 G.14 of the land as surplus land under his order dated 25.2.1984 which was carried in appeal by the petitioner by filing appeal before the Deputy COllector (Appeals) Ahmedabad on 14.5.1984 which was dismissed by the Dy. Collector after hearing the parties under his order dated 20.11.1984. Thereafter, the matter was taken in revision before the Gujarat Revenue Tribunal by filing aforesaid revision Application No. 27 of 1985 which too came to be dismissed by the tribunal under its order dated 30.10.1987 after hearing the parties and hence this petition.

Learned advocate Mr. Patel appearing for the petitioners has submitted that the tribunal has committed gross error in not considering the important fact that in all there are seven members in the family and, therefore, as per the provisions of sec.6 (3B) of the Act, and also as per the case law reported in 1984 GLH page 1001 and 1994 (1) GLR page 448 and 1997 (1) GLR 132, the family of the petitioner is entitled to additional 2/5th Units and if that would have been given, there would have been no surplus land. He has also submitted that the petitioner has challenged the order passed by the Assistant Collector dated 22nd August, 1977 but the tribunal has not considered the said challenge and, therefore, there is error which is apparent on the face of the record and, therefore, the impugned order passed by the tribunal is required to be quashed and set aside. He has further submitted that under sec. 21 of the Gujarat Agricultural Lands Ceiling Act, 1961, original power is with the authority to decide the controversy. Section 35 provides appeal before the Collector whereas sec. 38 provides revision against the order of the Collector and, therefore, as per his submission, it is continuous proceedings and, therefore, the petitioner is entitled to challenge the order dated 22.8.1977 passed by the Assistant Collector against the petitioner which has not been considered by the tribunal in its proper perspective

and in not doing so, the tribunal has erred in law and facts. He has relied upon the judgment of the apex court in the case of Kshitish Chandra Bose versus Commissioner of Ranchi reported in AIR 1981 SC 707 wherein the apex court has observed that where the High Court in second appeal though not having jurisdiction illegally reversed the concurrent finding of fact and ordered remand, the aggrieved party can, in an appeal to the supreme court from the final order of the High Court after remand, challenge even the first order of the High court making remand and all the proceedings taken thereafter as a result of the illegal order of remand. The apex court has also observed in the said decision that the first judgment of the High Court ordering remand being illegal, all the proceedings taken thereafter would become void ab initio judgments of the Patna High Court dated dated 17.2.1967 and 30.9.1970. Relying on the aforesaid observations, Mr. Patel has submitted that the facts of the present case are identical to the facts of the case before the apex court. The order passed by the Assistant Collector dated 22nd August, 1977 is illegal order and the petitioner has also challenged the same while challenging the ultimate out come of the said order before the tribunal and the tribunal has not appreciated or considered the same in its proper perspective and, therefore, the order passed by the tribunal is required to be quashed and set aside.

On the other hand, learned Asstt. G.P. Mr. Pandya has submitted that the impugned order passed by the tribunal is quite just, proper and valid order and the same requires no interference of this Court while exercising the powers under Article 227 of the Constitution of India. He has submitted that this court is having very limited jurisdiction under Article 227 of the Constitution and while exercising such jurisdiction, it is not open for this court to reappreciate the evidence which was once appreciated by the lower authorities. He has also submitted that while exercising the powers under Article 227 of the Constitution, this court cannot act as an appellate court against the orders passed by the tribunal. He has further submitted that the petitioner has not challenged the order passed by the Assistant Collector in revision and therefore, that has become conclusive and final and, therefore, now the petitioner cannot challenge the same and the tribunal was justified in not considering the said challenge. In view of his aforesaid submissions, he has submitted that there is no substance in this petition and the same requires to be dismissed.

I have considered the submissions made by the learned advocates for the respective parties. I have also perused the impugned order passed by the tribunal and other papers on record of this petition. In para 9 of the impugned order passed by the tribunal, the revisional authority has appreciated the facts on record and has observed that the appeal no. 165 of 1977 was decided by the tribunal on 22nd August, 1977 wherein he has rejected all the arguments in appeal proceedings except one point which he has accepted regarding the selection of the lands by the present applicant. The tribunal has observed that the Assistant Collector has given further chance for selection of surplus lands while the other legal points were negative. The tribunal observed that inview of this decision, the petitioner should have filed revision application before this tribunal if he wanted to get relief on any other point under sec.6(3B) of the Act. The tribunal has also found from appreciation of the record that the petitioner has filed no appeal or revision against the order of the Assistant Collector dated 22.8.1977 and hence the said order of the Assistant Collector has become conclusive and final. According to the directions given by the Assistant Collector, the Mamlatdar and ALT has given a chance for selection of the lands but the petitioner, instead of selecting the lands, has gone into other merits of the matter which the Mamlatdar and ALT has rightly rejected by his order dated 25.2.1984 which was rightly confirmed by the Deputy Collector while rejecting the appeal of the petitioner which preferred against the order of the Mamlatdar dated 25.2.1984. In view of the appreciation of such facts on record, the tribunal has dismissed the revision of the petitioner. I do not see any infirmity and irregularity or jurisdictional error in the order passed by the tribunal.

Learned advocate Mr. Patel has fairly admitted and has not raised any contention in respect of the provisions of sec. 6(3B) of the Act. He has not been able to satisfy this court that the order passed by the Assistant Collector dated 22.8.1977 is in continuous proceedings in respect of the one transaction. I have gone through the decision in case of Kshitish Chandra Bose versus Commissioner of Ranchi (supra) which was cited at the Bar by the learned counsel for the petitioner and the same is not applicable to the facts of the present case. I have also gone through the decision reported in 1997 (1) GLR page 132 and 1994 (1) GLR 448 which were cited by the learned counsel for the petitioner. Those decisions are relating to the merits of the case but that can be helpful to the petitioner if

the petitioner would have challenged the order passed by the Assistant Collector dated 22nd August, 1977 before the revisional authority. As observed by the tribunal, since same has not been challenged by the petitioner in revision, that order of the Assistant Collector has attained finality and has become conclusive and, therefore, the petitioner is not entitled to address the tribunal on merits and, therefore, even said two decisions are also not helpful to the petitioner in view of the peculiar facts of the present case.

Having perused the entire order passed by the tribunal, as per my view, the order passed by the tribunal is well reasoned order. There is no error which is apparent on the face of the record. Learned advocate for the petitioner has also not been able to point out any infirmity in the order impugned herein. Therefore, according to my opinion, the tribunal has not committed any error in passing the said order. Further in view of the decisions reported in 1998 (1) GLR page 17 and 1998 (1) AIR SCW page 1840 as well as the decision reported in 1998(1) GLH 461, this court cannot act as an appellate authority and cannot reappreciate the very same evidence which was once appreciated by the tribunal and the lower authorities.

Therefore, taking into consideration all these aspects of the matter, according to my opinion, the impugned order passed by the tribunal requires no interference at the hands of this court while exercising the powers under Article 227 of the Constitution of India and this petition is required to be dismissed. Same is accordingly dismissed with no order as to costs. Rule is discharged. Ad interim relief, if any, shall stand vacated.

12.9.2000. (H.K. Rathod,J.)

Vyas